

Emergency Ordinance No. 2020-02

**AN EMERGENCY ORDINANCE CONTINUING THE STATE OF EMERGENCY AND
AUTHORIZING ADDITIONAL OUTDOOR COMMERCIAL USES TO HELP
PREVENT HARM TO THE PUBLIC DURING THE COVID-19 PANDEMIC**

WHEREAS, the City Council has authority to address threats to the public health and safety in accordance with West Virginia Code sections 8-12-5 paragraphs 23, 40, and 44; and

WHEREAS, the ongoing COVID-19 Pandemic threatens public health in the City; and

WHEREAS, effective March 16, 2020, the Governor of the State of West Virginia has declared a state of emergency in all fifty-five West Virginia counties as a result of the COVID-19 pandemic; and

WHEREAS, on March 23, 2020, the Governor of the State of West Virginia issued Executive Order 9-20, denominated the “Stay at Home” Order, ordering citizens to stay at their residences unless an exception permitted travel; and

WHEREAS, avoiding large gatherings and limiting close interactions with others outside our homes, in compliance with guidelines from public health officials and as directed by Executive Order 9-20 issued by the Governor of the State of West Virginia, have been effective to limit the spread of disease and conserve essential medical resources; and

WHEREAS, on April 4, 2020, the Governor of the State of West Virginia issued Executive order 21-20, expanding the restrictions in the Stay at Home Order in Harrison, Kanawha, and Monongalia Counties and granting additional authorities to the Health Departments in these counties to impose measures restricting gatherings and travel to respond to the COVID-19 pandemic; and

WHEREAS, Executive Order 21-20 designates Monongalia County as a “hot spot” due to the prevalence of COVID-19 infections relative to other areas of the state and imposes restrictions limiting outdoor gatherings to no more than five people and requiring essential businesses to have employees work remotely to the maximum extent possible; and

WHEREAS, taking these steps to limit interpersonal interaction has been determined by public health experts to be essential to avoiding a rapid increase in the spread of COVID-19 infections that would be likely to overwhelm available health care resources and limit the ability of the health care system to not only treat victims of COVID-19 but also to treat others with emergent medical needs; and

WHEREAS, on April 30, 2020, the Governor of the State of West Virginia issued Executive Order 34-20, denominated the “Safer at Home” Order, lifting many of the mandatory restrictions

on travel and gatherings in the Stay at Home Order and providing relaxed restrictions for business occupancies and the size of social gatherings;

WHEREAS, the Governor of the State of West Virginia has issued guidelines and schedules for the resumption of businesses and other facilities welcoming the public, together with measures intended to limit the further spread of COVID-19 infections as members of the public enter and gather at such businesses and facilities; and

WHEREAS, City Council finds and determines that renewed gathering and travel should promote outdoor activity, rather than indoor gatherings, to the greatest extent possible to promote physical distancing and limit the spread of COVID-19 infections; and

WHEREAS, one method available to the City to promote outdoor activity rather than indoor activity, along with physical distancing practices, is to relax enforcement of laws regulating the use of outdoor spaces at businesses and requiring the use of those spaces for parking; and

WHEREAS, City Council finds and determines that these measures are effective and necessary means to ensure that all members of the public are protected to the greatest extent practicable from the effects of the ongoing COVID-19 pandemic; and

WHEREAS, West Virginia Code Chapter 8, Article 11, Section 3(d) provides that City Council may enact an emergency ordinance without following the ordinary procedures prescribed by law in the case of a pressing public emergency making action under the ordinary procedure dangerous to the public health, safety or morals, and by affirmative vote of two thirds of the members of Council; and

WHEREAS, the nature of any emergency justifying adoption of an emergency ordinance must be set out in full in the ordinance; and

WHEREAS, the ongoing spread of the COVID-19 pandemic and the state and federal guidelines providing for the resumption of public gatherings and reopening of businesses and facilities welcoming the public create a pressing public need to respond to renewed activity by altering local laws and regulations to promote outdoor activity and physical distancing to limit the further spread of COVID-19 infections, and this pressing public need justifies adoption of this emergency ordinance; and

WHEREAS, West Virginia Code Chapter 8, Article 11, Section 2 authorizes delegation of duties by Council to an officer when it would be impracticable to lay down by ordinance for all cases a uniform guide for exercising such discretion; and

WHEREAS, the nature of the COVID-19 pandemic requires discretion to respond to the developing spread of the disease such that discretion to employ the specific emergency measures authorized by this Ordinance must be delegated to an officer of the City;

NOW, THEREFORE, The City of Morgantown hereby ordains the following:

Article I. Continuation of Declaration of Emergency; Authority of City Manager;
Implementation of Authority

SECTION 1. The Governor of the State of West Virginia declared a state of emergency in all fifty-five counties in West Virginia effective March 16, 2020 due to the ongoing COVID-19 pandemic. The state of emergency remains in effect as of the date of adoption of this ordinance.

SECTION 2. The City of Morgantown recognizes the declared state of emergency as effective within the City and hereby declares that such state of emergency shall continue within the City until the declaration of a state of emergency is terminated by the Governor. The City of Morgantown recognized and declared the state of emergency in the City under Emergency Ordinance 2020-1, which ordinance was made effective for a period of ninety (90) days and the provisions of which would expire without further action. The state of emergency in the City and the authorities enacted within Emergency Ordinance 2020-1 are hereby continued in effect until they expire pursuant to the terms of this Ordinance.

SECTION 3. In accordance with West Virginia Code Chapter 15, Article 5, Section 8, each political subdivision in which any disaster as described in *W. Va. Code* § 15-5-1 occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise its powers under this section in light of the exigencies of extreme emergency situations without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entry into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes and appropriation and expenditure of public funds.

SECTION 4. The City Manager is hereby authorized and directed to exercise these authorities, with the advice and direction of Council, to combat the COVID-19 pandemic giving rise to the above-referenced declaration of a state of emergency by the Governor.

SECTION 5. During the effective period of this Ordinance, the City Manager is authorized and directed to implement all appropriate and necessary measures authorized by this Ordinance to address the COVID-19 pandemic, consistent with the advice and direction of City Council.

SECTION 6. Prior to implementing any such authority or authorities, the City Manager shall adopt a written order identifying the authority to be employed and the means to be used in employing the authority, and the written order shall be delivered to each member of City Council, to the City Clerk, who shall keep a record of such order, and shall be made available to the public.

SECTION 7. The restrictions established by this Ordinance shall apply only upon issuance of a written order of the City Manager pursuant to Section 2 of this Article, and only to the extent stated therein.

Article II. Suspending enforcement of certain Minimum Parking Requirements and Temporary Sign Regulations

SECTION 1. To help businesses reopening meet physical distancing and related rules or guidelines under emergency orders of the State of West Virginia or the Monongalia County Health Department, the City Manager is hereby authorized and directed to temporarily suspend the enforcement and administration of certain Planning and Zoning Code provisions identified in this Article II. Suspending enforcement will allow businesses to use additional outdoor space, otherwise used for parking, to expand dining or sales operations. Suspending enforcement will also allow businesses taking advantage of these opportunities to indicate their services to the public with appropriate signs.

SECTION 2. The enforcement activities to be suspended are as follows:

- a. Minimum Parking Requirements. Existing off-street parking spaces serving existing nonresidential uses located in nonresidential zoning districts (exclusive of the R-1, R-1A, R-2, and R-3 zoning districts, but including established commercial uses that are open to the public and which constitute a lawful nonconforming use) may be used during this temporary enforcement suspension period by restaurant, retail sales and like nonresidential uses for dining, seating, and/or the display of merchandise, products, produce, plants, materials, equipment, appliances, etc. under the following conditions:
 - (i) Existing accessible parking spaces, access points, and routes must remain open and accessible.
 - (ii) Existing off-street parking spaces used for dining, seating, and/or display should be protected from adjoining parked vehicles and drive aisles.
 - (iii) Freestanding canopies, awnings and the like used to temporarily cover and/or enclose dining, seating, and/or display areas within existing off-street parking spaces must be secured appropriately and shall obtain related building permits if required.
- b. Temporary Signage. The following provisions are set forth for temporary signs erected between April 1, 2020 and the end of this temporary enforcement suspension period.
 - (i) Temporary sign permits will not be required.
 - (ii) Temporary signs erected during this period will not be counted toward the maximum number of temporary signs erected within a 12-month period as set forth in Section 1369.07 (H)(3) of the Planning and Zoning Code.
 - (iii) Temporary signs erected during this period and without a temporary sign permit shall be removed within thirty (30) days following the end of enforcement suspension. Temporary signs erected during this period may

continue if a permit for the sign is obtained in compliance with Section 1369.07 (H) of the Planning and Zoning Code.

- (iv) Temporary signs erected during this period may not exceed 32 square feet in surface area and may not obstruct a clear sight triangle nor present a hazard to the general public.

This ordinance shall be effective upon adoption and shall lapse without further action on September 25, 2020.

ADOPTED: May 19, 2020



Mayor

FILED: May 20, 2020



City Clerk